

## OFFICE OF CONGRESSIONAL AFFAIRS

### Routing Slip

	ACTION	INFO
1. D/OCA		X
2. DD/Legislation	X	X
3. DD/Senate Affairs		X
4. Ch/Senate Affairs		
5. DD/House Affairs		X
6. Ch/House Affairs		
7. Admin Officer		
8. Executive Officer		
9. FOIA Officer		
10. Constituent Inquiries Officer		
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SUSPENSE

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EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503  
February 19, 1988

**SPECIAL**

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - **OCA FILE** *Legs*

Department of State (Howdershell 647-4463)	25
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SUBJECT: H.R. 3651, "Antiterrorism and Arms Export Amendments Act of 1987." Please provide the following in writing by FRIDAY, FEBRUARY 26th:

1. An overall position on the bill (e.g. support, oppose, no objection or support/no objection, if amended.) If your agency's position includes suggested amendments, please provide the text of them; and
2. An explanation of how the bill changes existing operational procedures and thresholds.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than FRIDAY, FEBRUARY 26, 1988.

Questions should be referred to **ANNETTE ROONEY/SUE THAU** (395-7300), the legislative analyst in this office or to Ellen Hays (395-3920).

*Ronald K. Peterson*

RONALD K. PETERSON FOR  
Assistant Director for  
Legislative Reference

Enclosures

cc: B. Sasser  
B. Howard

R. Neely  
D. Taft

R. Bent

**SPECIAL**

100TH CONGRESS  
1ST SESSION

# H. R. 3651

To prohibit exports of military equipment to countries supporting international terrorism, and for other purposes.

## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 1987

Mr. BERMAN (for himself, Mr. FASCELL, Mr. HAMILTON, and Mr. HYDE) introduced the following bill; which was referred to the Committee on Foreign Affairs

## A BILL

To prohibit exports of military equipment to countries supporting international terrorism, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Antiterrorism and Arms  
5 Export Amendments Act of 1987".

### 6 SEC. 2. PROHIBITION ON ARMS TRANSACTIONS WITH COUN- 7 TRIES SUPPORTING TERRORISM.

8 (a) PROHIBITION.—Section 40 of the Arms Export  
9 Control Act (22 U.S.C. 2780) is amended to read as follows:

1 "SEC. 40. TRANSACTIONS WITH COUNTRIES SUPPORTING ACTS  
2 OF INTERNATIONAL TERRORISM.

3 "(a) PROHIBITED TRANSACTIONS.—

4 "(1) UNITED STATES GOVERNMENT.—The fol-  
5 lowing transactions by the United States Government  
6 are prohibited with respect to any country described in  
7 subsection (b):

8 "(A) Exporting or otherwise providing (by  
9 sale, lease or loan, grant, or other means), direct-  
10 ly or indirectly, any munitions item to such coun-  
11 try under the authority of this Act, the Foreign  
12 Assistance Act of 1961, or any other law. In im-  
13 plementing this subparagraph, the United States  
14 Government shall suspend delivery to such coun-  
15 try of any such item pursuant to any such trans-  
16 action which has not been completed at the time  
17 the Secretary of State makes the determination  
18 described in subsection (b), and shall terminate  
19 any lease or loan to such country of any such  
20 item which is in effect at the time the Secretary  
21 of State made that determination.

22 "(B) Providing credits, guarantees, or other  
23 financial assistance under the authority of this  
24 Act, the Foreign Assistance Act of 1961, or any  
25 other law, with respect to the acquisition of any  
26 munitions item by such country. In implementing

1           this subparagraph, the United States Government  
2           shall suspend expenditures pursuant to any such  
3           assistance obligated before the Secretary of State  
4           made the determination described in subsection  
5           (b).

6           “(C) Consenting under section 3(a) of this  
7           Act, under section 505(a) of the Foreign Assist-  
8           ance Act of 1961, under the regulations issued to  
9           carry out section 38 of this Act, or under any  
10          other law, to any transfer of any munitions item  
11          to such country. In implementing this subpara-  
12          graph, the United States Government shall with-  
13          draw any such consent which is in effect at the  
14          time the Secretary of State makes the determina-  
15          tion described in subsection (b).

16          “(D) Providing any license or other approval  
17          under section 38 of this Act for any export or  
18          other transfer (including by means of a technical  
19          assistance agreement, manufacturing licensing  
20          agreement, or coproduction agreement) of any  
21          munitions item to such country. In implementing  
22          this subparagraph, the United States Government  
23          shall suspend any such license or other approval  
24          which is in effect at the time the Secretary of

1 State makes the determination described in sub-  
2 section (b).

3 “(E) Otherwise participating directly or indi-  
4 rectly in, or take any action to facilitate, the ac-  
5 quisition of any munitions item by such country.  
6 This subparagraph applies with respect to activi-  
7 ties of any department, agency, or other instru-  
8 mentality of the Government, any officer or em-  
9 ployee of the Government (including members of  
10 the United States Armed Forces), and any person  
11 acting at the request or on behalf of the Govern-  
12 ment.

13 “(2) UNITED STATES PERSONS.—A United  
14 States person may not intentionally—

15 “(A) export or otherwise provide directly or  
16 indirectly (by sale, lease or loan, grant, or any  
17 other means) any munitions item to any country  
18 described in subsection (b) or to any person or  
19 entity which that United States person has reason  
20 to believe will provide such item to any such  
21 country; or

22 “(B) otherwise participate directly or indi-  
23 rectly in, or take any action to facilitate, the ac-  
24 quisition of any munitions item by any country de-  
25 scribed in subsection (b) or by any person or

1           entity which that United States person has reason  
2           to believe will provide such item to any such  
3           country.

4           This paragraph applies with respect to actions taken  
5           by a United States person either within or outside the  
6           United States.

7           “(b) COUNTRIES COVERED BY PROHIBITION.—The  
8           prohibitions contained in subsection (a) apply with respect to  
9           any country whose government the Secretary of State  
10          determines—

11           “(1) grants sanctuary from prosecution to any in-  
12          dividual or group which has committed an act of inter-  
13          national terrorism; or

14           “(2) has repeatedly provided support for acts of  
15          international terrorism.

16           “(c) PUBLICATION OF DETERMINATIONS.—Each de-  
17          termination of the Secretary of State under subsection (b)  
18          shall be published in the Federal Register.

19           “(d) RESCISSION.—A determination made by the Sec-  
20          retary of State under subsection (b) may not be rescinded  
21          unless the President, at least 90 days before the proposed  
22          rescission would take effect, submits to the Speaker of the  
23          House of Representatives and the chairman of the Committee  
24          on Foreign Relations of the Senate a report justifying the  
25          rescission and certifying that—

1           “(1) the government concerned has not provided  
2           any support for international terrorism, including sup-  
3           port or sanctuary for any major terrorist or terrorist  
4           group, during the preceding 6-month period; and

5           “(2) the government concerned has provided as-  
6           surances that it will not support acts of international  
7           terrorism in the future.

8           “(e) WAIVER.—The President may waive the prohibi-  
9           tion contained in subsection (a) with respect to a specific  
10          transaction if—

11           “(1) the President determines that the transaction  
12           is vital to the national security interests of the United  
13           States; and

14           “(2) not less than 15 days prior to the proposed  
15           transaction, the President—

16           “(A) consults with the Committee on Foreign  
17           Affairs of the House of Representatives and the  
18           Committee on Foreign Relations of the Senate;  
19           and

20           “(B) submits to the Speaker of the House of  
21           Representatives and the chairman of the Commit-  
22           tee on Foreign Relations of the Senate a report  
23           containing—

24           “(i) the name of any country involved in  
25           the proposed transaction, the identity of any



1 recipient of the items to be provided pursu-  
2 ant to the proposed transaction, and the an-  
3 ticipated use of those items;

4 “(ii) a description of the munitions items  
5 involved in the proposed transaction (includ-  
6 ing their market value) and the actual sale  
7 price at each step in the transaction (or if the  
8 items are transferred by other than sale, the  
9 manner in which they will be provided);

10 “(iii) the reasons why the proposed  
11 transaction is vital to the national security  
12 interests of the United States and the justifi-  
13 cation for such proposed transaction;

14 “(iv) the date on which the proposed  
15 transaction is expected to occur; and

16 “(v) the name of every United States  
17 Government department, agency, or other  
18 entity involved in the proposed transaction,  
19 every foreign government involved in the  
20 proposed transaction, and every private party  
21 with significant participation in the proposed  
22 transaction.

23 To the extent possible, the information specified in subpara-  
24 graph (B) of paragraph (2) shall be provided in unclassified

1 form, with any classified information provided in an adden-  
2 dum to the report.

3       “(f) EXEMPTION FOR CERTAIN REPORTED ACTIVI-  
4 TIES.—The prohibitions contained in subsection (a) do not  
5 apply with respect to a transfer for which notification is given  
6 in accordance with section 36(e) of this Act.

7       “(g) RELATION TO OTHER LAWS.—The provisions of  
8 this section shall apply notwithstanding section 614(a) of the  
9 Foreign Assistance Act of 1961 (22 U.S.C. 2364(a)) or any  
10 other provision of law.

11       “(h) CRIMINAL PENALTY.—Any person who willfully  
12 violates this section shall be fined for each violation not more  
13 than \$1,000,000, imprisoned not more than 10 years, or  
14 both.

15       “(i) CIVIL PENALTIES; ENFORCEMENT.—In the en-  
16 forcement of this section, the President is authorized to exer-  
17 cise the same powers concerning violations and enforcement  
18 which are conferred upon departments, agencies, and officials  
19 by sections 11(c), 11(e), 11(g), and 12(a) of the Export Ad-  
20 ministration Act of 1979 (subject to the same terms and con-  
21 ditions as are applicable to such powers under that Act),  
22 except that, notwithstanding section 11(c) of that Act, the  
23 civil penalty for each violation of this section may not exceed  
24 \$500,000.

25       “(j) DEFINITIONS.—As used in this section—

1           “(1) the term ‘munitions item’ means any item  
2           which, if imported into or exported from the United  
3           States, would be on the United States Munitions List;  
4           and

5           “(2) the term ‘United States person’ means any  
6           United States resident or national (other than an indi-  
7           vidual resident outside the United States and employed  
8           by other than a United States person), any domestic  
9           concern (including any permanent domestic establish-  
10          ment of any foreign concern) and any foreign subsidi-  
11          ary or affiliate (including any permanent foreign estab-  
12          lishment) of any domestic concern which is controlled  
13          in fact by such domestic concern, as determined under  
14          regulations of the President.”.

15          (b) CONFORMING AMENDMENT.—Section 3(f) of the  
16 Arms Export Control Act (22 U.S.C. 2753(f)) is repealed.  
17 **SEC. 3. CONSIDERATIONS IN ISSUANCE OF ARMS EXPORT LI-**  
18 **CENSES AND IN ARMS SALES.**

19          (a) EXPORT LICENSES.—Section 38(a)(2) of the Arms  
20 Export Control Act (22 U.S.C. 2778) is amended by insert-  
21 ing “support international terrorism,” after “arms race,”.

22          (b) ARMS SALES.—Section 36(b)(1)(D) of that Act (22  
23 U.S.C. 2776(b)(1)(D)) is amended—

24                 (1) by redesignating clauses (ii) through (iv) as  
25                 clauses (iii) through (v), respectively; and

1 (2) by inserting the following new clause (ii) after  
2 clause (i):

3 “(ii) support international terrorism;”.

4 **SEC. 4. EXPORTS TO COUNTRIES SUPPORTING TERRORISM.**

5 Section 6(j) of the Export Administration Act of 1979  
6 (50 U.S.C. App 2405(j)) is amended to read as follows:

7 “(j) **COUNTRIES SUPPORTING INTERNATIONAL TER-**  
8 **RORISM.**—(1) A validated license shall be required for the  
9 export of goods or technology to a country if the Secretary of  
10 State has made the following determinations:

11 “(A) The government of such country grants  
12 sanctuary from prosecution to any individual or group  
13 which has committed an act of international terrorism,  
14 or the government of such country has repeatedly pro-  
15 vided support for acts of international terrorism.

16 “(B) The export of such goods or technology  
17 would contribute to the military potential of such coun-  
18 try, would be destined to a military end-user or for  
19 military end-use in such country, or would enhance the  
20 ability of such country to support acts of international  
21 terrorism.

22 “(2) Applications for any validated license required  
23 under paragraph (1) shall be generally denied by the  
24 Secretary.

1       “(3) The Secretary and the Secretary of State shall  
2 notify the Committee on Foreign Affairs of the House of  
3 Representatives and the Committee on Banking, Housing,  
4 and Urban Affairs and the Committee on Foreign Relations  
5 of the Senate at least 30 days before issuing any validated  
6 license required by paragraph (1).

7       “(4) Each determination of the Secretary of State under  
8 paragraph (1)(A), including each determination in effect on  
9 the date of the enactment of the Antiterrorism and Arms  
10 Export Amendments Act of 1987, shall be published in the  
11 Federal Register.

12       “(5) A determination made by the Secretary of State  
13 under paragraph (1)(A) may not be rescinded unless the  
14 President, at least 90 days before the proposed rescission  
15 would take effect, submits to the Speaker of the House of  
16 Representatives and the chairman of the Committee on  
17 Banking, Housing, and Urban Affairs and the chairman of  
18 the Committee on Foreign Relations of the Senate a report  
19 justifying the rescission and certifying that—

20       “(A) the government concerned has not provided  
21 any support for international terrorism, including sup-  
22 port or sanctuary for any major terrorist or terrorist  
23 group, during the preceding 6-month period; and

1           “(B) the government concerned has provided as-  
2           surances that it will not support acts of international  
3           terrorism in the future.”.

4   **SEC. 5. PROHIBITION ON ASSISTANCE TO COUNTRIES SUP-**  
5           **PORTING INTERNATIONAL TERRORISM.**

6           Section 620A of the Foreign Assistance Act of 1961  
7   (22 U.S.C. 2371) is amended to read as follows:

8   **“SEC. 620A. PROHIBITION ON ASSISTANCE TO GOVERNMENTS**  
9           **SUPPORTING INTERNATIONAL TERRORISM.**

10          “(a) **PROHIBITION.**—The United States shall not pro-  
11       vide any assistance under this Act, the Agricultural Trade  
12       Development and Assistance Act of 1954, the Peace Corps  
13       Act, or the Export-Import Bank Act to any country whose  
14       government the Secretary of State determines—

15               “(1) grants sanctuary from prosecution to any in-  
16       dividual or group which has committed an act of inter-  
17       national terrorism; or

18               “(2) has repeatedly provided support for acts of  
19       international terrorism.

20          “(b) **PUBLICATION OF DETERMINATIONS.**—Each de-  
21       termination of the Secretary of State under subsection (a),  
22       including each determination in effect on the date of the en-  
23       actment of the Antiterrorism and Arms Export Amendments  
24       Act of 1987, shall be published in the Federal Register.

1       “(c) RESCISSION.—A determination made by the Secre-  
2 tary of State under subsection (a) may not be rescinded  
3 unless the President, at least 90 days before the proposed  
4 rescission would take effect, submits to the Speaker of the  
5 House of Representatives and the chairman of the Committee  
6 on Foreign Relations of the Senate a report justifying the  
7 rescission and certifying that—

8               “(1) the government concerned has not provided  
9 any support for international terrorism, including sup-  
10 port or sanctuary for any major terrorist or terrorist  
11 group, during the preceding 6-month period; and

12              “(2) the government concerned has provided as-  
13 surances that it will not support acts of international  
14 terrorism in the future.

15       “(d) WAIVER.—Assistance prohibited by subsection (a)  
16 may be provided to a country described in that subsection  
17 if—

18              “(1) the President determines that national securi-  
19 ty interests or humanitarian reasons justify a waiver of  
20 subsection (a), except that humanitarian reasons may  
21 not be used to justify assistance under part II of this  
22 Act (including chapter 4, chapter 6, and chapter 8), or  
23 the Export-Import Bank Act; and

24              “(2) at least 15 days before the waiver takes  
25 effect, the President consults with the Committee on

1 Foreign Affairs of the House of Representatives and  
2 the Committee on Foreign Relations of the Senate re-  
3 garding the proposed waiver and submits a report to  
4 the Speaker of the House of Representatives and the  
5 chairman of the Committee on Foreign Relations of the  
6 Senate containing—

7 “(A) the name of the recipient country;

8 “(B) a description of the national security in-  
9 terests or humanitarian reasons which require the  
10 waiver;

11 “(C) the type and amount of and the justifi-  
12 cation for the assistance to be provided pursuant  
13 to the waiver; and

14 “(D) the period of time during which such  
15 waiver will be effective.

16 The waiver authority granted in this subsection may not be  
17 used to provide any assistance under the Foreign Assistance  
18 Act of 1961 which is also prohibited by section 40 of the  
19 Arms Export Control Act.”.

20 **SEC. 6. NOTICE TO CONGRESS OF THIRD COUNTRY TRANS-**  
21 **FERS.**

22 (a) **ITEMS SOLD UNDER FMS PROGRAM.**—The last  
23 sentence of section 3(a) of the Arms Export Control Act (22  
24 U.S.C. 2753(a)) is amended to read as follows: “In those  
25 instances where a certification from the President is not re-



1 quired pursuant to subsection (d), the President shall, before  
2 granting any consent under paragraph (2) of this subsection,  
3 submit a report with respect to such consent to the Speaker  
4 of the House of Representatives and to the chairman of the  
5 Committee on Foreign Relations of the Senate (such report  
6 to be submitted at least 15 days before the effective date of  
7 the consent unless the President certifies in his report that an  
8 emergency exists which requires that consent become effec-  
9 tive immediately in the national security interests of the  
10 United States) and shall notify the Congress in writing of any  
11 developments which alter or supplement the information pro-  
12 vided in such report.”.

13 (b) ITEMS EXPORTED PURSUANT TO A MUNITIONS LI-  
14 CENSE.—Section 38 of that Act (22 U.S.C. 2778) is amend-  
15 ed by adding at the end the following:

16 “(g) In those instances where a report from the Presi-  
17 dent is not required pursuant to section 3(d)(3), the Presi-  
18 dent—

19 “(1) before granting any consent to a transfer of  
20 any defense article or defense service, the export of  
21 which has been licensed or approved under this section,  
22 shall submit a report with respect to such consent to  
23 the Speaker of the House of Representatives and to  
24 the chairman of the Committee on Foreign Relations of  
25 the Senate (such report to be submitted at least 15

1 days before the effective date of the consent unless the  
2 President certifies in his report that an emergency  
3 exists which requires that consent become effective im-  
4 mediately in the national security interests of the  
5 United States); and

6 “(2) shall notify the Congress in writing of any  
7 developments which alter or supplement the informa-  
8 tion provided in such report.”.

9 (c) ITEMS PROVIDED UNDER MAP PROGRAM.—Section  
10 505 of the Foreign Assistance Act of 1961 (22 U.S.C. 2314)  
11 is amended by adding at the end the following:

12 “(h) The President shall, before granting any consent  
13 under subsection (a)(1)(B), submit a report with respect to  
14 such consent to the Speaker of the House of Representatives  
15 and to the chairman of the Committee on Foreign Relations  
16 of the Senate and shall notify the Congress in writing of any  
17 developments which alter or supplement the information pro-  
18 vided in such report. The report required by this subsection  
19 shall be submitted at least 15 days before the effective date of  
20 the consent unless the President certifies in his report that an  
21 emergency exists which requires that consent become effec-  
22 tive immediately in the national security interests of the  
23 United States.”.

1 **SEC. 7. DOD TRANSFERS TO OTHER AGENCIES.**

2 (a) **QUARTERLY REPORTS.**—Section 36(a) of the Arms  
3 Export Control Act (22 U.S.C. 2776(a)) is amended—

4 (1) by striking out “and” at the end of paragraph  
5 (9);

6 (2) by striking out the period at the end of para-  
7 graph (10) and inserting in lieu thereof “; and”; and

8 (3) by inserting after paragraph (9) the following:

9 “(10) a listing of all defense articles or defense  
10 services which were sold, leased, or otherwise trans-  
11 ferred by the Department of Defense to any other de-  
12 partment, agency, or other entity of the United States  
13 Government during the quarter for which such report  
14 is submitted (including the name of the recipient Gov-  
15 ernment entity and a discussion of what that entity will  
16 do with those defense articles or defense services) if—

17 “(A) the value of the defense articles or de-  
18 fense services was \$250,000 or more; or

19 “(B) the value of all defense articles and de-  
20 fense services transferred to that Government de-  
21 partment, agency, or other entity during that  
22 quarter was \$250,000 or more;

23 excluding defense articles and defense services trans-  
24 ferred for disposition or use solely within the United  
25 States.”.

1       (b) **CLASSIFICATION OF REPORTS.**—That section is  
2 amended in the parenthetical clause in the text preceding  
3 paragraph (1) by inserting “, and any information provided  
4 under paragraph (10) of this subsection may also be provided  
5 in a classified addendum” after “(b)(1) of this section”.

6 **SEC. 8. NOTICE TO CONGRESS OF CERTAIN ARMS TRANSFERS.**

7       Section 36 of the Arms Export Control Act (22 U.S.C.  
8 2776) is amended by adding at the end the following:

9       “(e) The United States Government may not, under the  
10 authority of this or any other Act, transfer or assist in the  
11 transfer of any munitions item (as defined in section 40(j))  
12 directly or indirectly to any foreign government, any foreign  
13 group or person, or any other person outside the United  
14 States Government pursuant to a Presidential finding under  
15 section 662 of the Foreign Assistance Act of 1961 unless the  
16 President notifies the Select Committee on Intelligence of the  
17 Senate and the Permanent Select Committee on Intelligence  
18 of the House of Representatives of such transfer in accord-  
19 ance with the procedures set forth in section 501 of the Na-  
20 tional Security Act of 1947 (50 U.S.C. 413) for the reporting  
21 of any intelligence activities.”.

22 **SEC. 9. SPECIAL AUTHORITIES.**

23       The second sentence of section 614(c) of the Foreign  
24 Assistance Act of 1961 (22 U.S.C. 2364(c)) is amended to  
25 read as follows: “The President shall fully inform the chair-

1 man and ranking minority member of the Committee on For-  
2 eign Affairs of the House of Representatives and the chair-  
3 man and ranking minority member of the Committee on For-  
4 eign Relations of the Senate of each use of funds under this  
5 subsection prior to the use of such funds.”.

6 **SEC. 10. HOSTAGE ACT.**

7 Section 2001 of the Revised Statutes of the United  
8 States (22 U.S.C. 1732) is amended by inserting “and not  
9 otherwise prohibited by law” after “acts of war”.

○